

IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT  
IN AND FOR MONROE COUNTY, FLORIDA

CITY OF KEY WEST, FLORIDA  
CITIZEN REVIEW BOARD,

Plaintiff,

vs.

CASE NO. 2009-CA-1008-K

PABLO RODRIGUEZ,

Defendant.

COMPLAINT TO ENFORCE SUBPOENA

Plaintiff CITY OF KEY WEST, FLORIDA, CITIZEN REVIEW BOARD, sues the  
Defendant, PABLO RODRIGUEZ, and alleges:

1. This is an action to enforce a Subpoena duly issued by the City of Key West, Citizen Review Board for the testimony of Sergeant Pablo Rodriguez before the Citizen Review Board. At all times material hereto, Sergeant Rodriguez was a sworn law enforcement officer employed by the City of Key West Police Department.
2. This court has jurisdiction to enforce a subpoena lawfully issued by the CRB under the plenary jurisdiction of the Circuit Court.
3. The Citizen Review Board ("CRB") is an independent board of the City of Key West, Florida created by the electors of Key West through an amendment to the City Charter that became effective November 5, 2002. A true and correct copy of Section 1.07 of the City Charter provision creating the CRB is attached as Exhibit "A" and incorporated by reference into this Complaint (the "Charter Amendment").

4. The CRB has broad authority to “review and/or investigate complaints involving Key West police officers and forward findings and/or recommendations to City management, the chief of police, State Attorney, other state and federal law enforcement agencies and/or grand juries.”

5. Under the Charter Amendment, the CRB is authorized to “subpoena witnesses and documents when conducting an investigation. . . .” City of Key West City Charter, Section 1.07(d).

6. The CRB is reviewing the circumstances that led to the issuance of the search warrant in a criminal investigation of Omar Brown (CRB Case No. 07-001). The search warrant was issued at the request of Sergeant Pablo Rodriguez of the Key West Police Department, who signed a sworn Affidavit and Application for Search Warrant.

7. In his CRB complaint, Mr. Brown contends that Sergeant Rodriguez falsely stated in the search warrant affidavit that he “has arrested [Omar Brown] in the past.”

8. The CRB conducted its own investigation to determine whether Mr. Brown previously had been arrested by Pablo Rodriguez. The CRB found no evidence of prior arrests of Omar Brown by Sergeant Rodriguez. In an effort to resolve the discrepancy, the CRB requested that Sergeant Rodriguez appear voluntarily before the board to explain the factual circumstances regarding prior arrests of Mr. Brown by Sergeant Rodriguez. Sergeant Rodriguez refused to appear before the CRB on the advice of his attorney.

9. At a regularly scheduled meeting of the CRB conducted February 9, 2009, the CRB voted unanimously for the issuance of a subpoena to Sergeant Rodriguez for testimony before the CRB. On March 10, 2009, the Chairman of the CRB, Bryan Green, executed a

subpoena to Sergeant Pablo Rodriguez of the Key West Police Department for testimony before the CRB. A true copy of the subpoena is attached to this Complaint as Exhibit "B." The subpoena commanded Sergeant Rodriguez to appear before the CRB on April 27, 2009, at 6:30 p.m. at Old City Hall, 510 Greene Street, Key West, Florida.

10. Sergeant Rodriguez failed to appear before the CRB as directed by the subpoena. A true copy of a Certificate of Non Appearance issued by the court reporter is attached as Exhibit "C."

11. Under the holding in *Timoney v. City of Miami Investigative Panel*, 900 So. 2d 614 (Fla. 3d DCA 2008) and *Barry v. Garcia*, 573 So.2d 932 (Fla. 3d DCA 1991), *rev. denied*, 583 So. 2d 1034 (Fla. 1991), the CRB has the legal authority to issue a subpoena incident to the exercise of its investigatory authority as set forth in the Charter Amendment. See also, *Dibb v. County of San Diego*, 884 P.2d 1003, 1013 (Calif. 1994).

### **CONCLUSION**

Based on the foregoing, the CRB respectfully requests that this Court enter an order directing the Defendant Pablo Rodriguez to comply with the subpoena issued by the CRB and served upon him and to appear before the CRB to testify in accordance with the subpoena.

  
**ROBERT CINTRON, JR., ESQUIRE**

Florida Bar No. 0325031  
317 Whitehead Street  
Key West, Florida 33040  
Tel. (305) 296-5676  
Fax. (305) 296-4331

**ATTORNEY FOR THE CITY OF KEY WEST  
CITIZEN REVIEW BOARD**

## **1.07 Citizen review board.**

### **I. Duties and powers of the board.**

(a) The Citizen Review Board (CRB) is an independent board with authority to review and/or investigate complaints involving Key West police officers and forward findings and/or recommendations to City management, the chief of police, State Attorney, other state and federal law enforcement agencies and/or grand juries. The chief of police must respond to CRB recommendations in writing within thirty (30) days.

(b) The CRB may make written recommendations to the city commission, city manager and chief of police concerning police department policies and procedures. The chief of police must respond to CRB recommendations in writing within thirty (30) days.

(c) The CRB may retain the services of an attorney and professional investigators and may conduct investigations, inquiries and hearings, working as appropriate with the State Attorney and chief of police. The existence of ongoing investigations does not preclude the CRB from acting, but the board should exercise its powers so as not to interfere with ongoing investigations and conduct its activities consistent with applicable law, including the Florida Government in the Sunshine Law and applicable labor laws.

(d) The CRB may subpoena witnesses and documents when conducting an investigation as follows:

- (1) A request for a subpoena must be reviewed by the CRB attorney;
- (2) The CRB attorney may or may not approve the request after consulting with the State Attorney's Office; and
- (3) The CRB does not have the authority to offer immunity from prosecution.

## **II. Board membership.**

(a) The CRB shall consist of seven (7) volunteer members, to be appointed as follows:

(1) The city commission shall appoint four (4) members from nominations from community-based civic and social service organizations, including, but not limited to: the League of Women Voters, the Key West Business Guild, the Bahama Village Business Association, the NAACP, the Key West Chamber of Commerce, the local chapter of the Florida Bar and local organizations of clergymen. Each nomination must be accompanied by an application from the prospective member, outlining why he or she wishes to serve, detailing qualifications and agreeing to the time demands of the job. The Committee for a Citizens Review Board shall, on an ad hoc basis, coordinate the nomination process, including publicly noticing organizations, soliciting nominations, and ensuring that nominations are complete and that the qualifications of prospective members meet the membership criteria specified in this ordinance before they are submitted to the city commission.

(2) The original four (4) members will then meet to select three (3) additional members from applications from the general public. The Committee for a Citizen Review Board shall coordinate the nomination process, including the placement of public notices soliciting applications and ensuring that nominations are complete and that the qualifications of prospective members meet the membership criteria specified in this ordinance before they are submitted to the first four appointees of the Board for consideration.

(3) All appointments to the CRB should be made with sensitivity to the racial, gender, ethnic, religious, linguistic and cultural diversity of the City of Key West.

### **III. Vacancies.**

(a) If a vacancy occurs among the four members of the CRB appointed by the city commission, that vacancy shall be filled by the city commission from nominations submitted by community-based organizations within ninety (90) days from the time the vacancy is announced. Every nomination must be accompanied by an application from the potential member. The executive director of the CRB will coordinate the nominating process, including noticing the organizations, soliciting nominations, and ensuring that nominations are complete and the qualifications of prospective members meet membership criteria specified in this ordinance before they are submitted to the city commission.

(b) If a vacancy occurs among the three members appointed by the CRB, the CRB, by majority vote, shall fill that vacancy from nominations from the general public. The executive director of the CRB will coordinate the nominating process.

### **IV. Qualifications for members of the CRB; training and education.**

(a) All members of the CRB shall be residents of the City of Key West and shall have good reputations for integrity and community service.

(b) No appointee to the CRB, nor any member of his or her immediate family, shall be currently employed by the City of Key West.

(c) No appointee may be currently a party in litigation against the City of Key West.

(1) The filing of a complaint against the City of Key West alleging liability of the City through actions of any law enforcement officer shall immediately disqualify any appointee from

serving on the CRB.

(2) Any appointee who has been a legal representative of any party in litigation against the City of Key West is prohibited from serving on the CRB for two years from the conclusion of such litigation.

(d) Training and education. In applying to become a member of the CRB, applicants must agree to participate in at least 30 hours of structured training, as recommended by the National Association for Civilian Oversight of Law Enforcement, before participating in Board activities, plus extensive continuing education throughout their term of office. In addition, the city manager and city attorney shall coordinate training for the Board concerning applicable City laws and procedures. The CRB must undergo up to six (6) months of training and organization before it accepts the first complaint for action.

#### **V. Terms of office.**

(a) The terms of office for all members is four (4) years, except for the initial terms as follows: two (2) members shall serve for four (4) years; three (3) members shall serve for three (3) years; and two (2) members shall serve for two (2) years. All initial terms shall be determined by lot after all appointments have been made. This formula will result in the terms of either two or three members expiring every year.

(b) CRB members will continue to serve until their successors have been appointed; but no member shall serve more than nine consecutive years on the Board.

#### **VI. Meetings, quorum and voting; officers.**

(a) Meetings, quorum and voting. All meetings of the CRB will be open to the public and advertised in advance as per the Florida Government in the Sunshine Law. Exceptions shall

be to discuss confidential matters before the Board. Meetings shall be conducted at Old City Hall.

(1) The chairperson and three members may call a meeting.

(2) A quorum shall consist of four members of the CRB.

(3) An affirmative vote of not less than 51 percent of the members present and voting at any meeting is required for any action to be taken by the CRB unless otherwise set forth herein.

(b) Parliamentary authority and rules of procedure. The parliamentary authority of the CRB shall be Robert's Rules of Order (current legislation) unless the CRB adopts its own order of business and rules of procedure governing its meetings.

(c) The CRB meetings shall be open to the public as per the Florida Government in the Sunshine Law. Notice of the meetings shall be posted by the city clerk at City Hall and other appropriate locations after being advised by the CRB of an upcoming meeting. Advertisements of meetings shall be placed in newspapers of general circulation no less than seven (7) days prior to the meeting. The CRB executive director shall coordinate with the city clerk concerning noticing of CRB meetings.

(d) Recordation. The CRB shall be responsible for the recordation and transmittal of its minutes as per the Florida Government in the Sunshine Law. Copies of minutes of all CRB meetings shall be furnished to the mayor, city commissioners, city manager, city clerk and chief of police, and shall be available for public inspection as per provisions in the Sunshine Law.

(e) Officers. The CRB shall select, from its members, by majority vote, a chairperson, a vice-chairperson, and such other officers as deemed necessary. The chairperson shall have the



authority to appoint all members serving on the various committees that the CRB may establish from time to time.

## **VII. Procedures.**

The following procedures shall be followed:

(a) Complaints concerning allegations of police officer misconduct may be submitted to the CRB. All complaints shall be in writing using a form approved by the CRB for that purpose. The Chief of police shall be notified of complaints received by the CRB within two (2) working days;

(b) The review or investigation of complaints shall proceed as follows:

(1) Consulting with the Key West police department and the State Attorney's Office, the CRB Executive Director or attorney will determine if an investigation related to the complaint is already underway.

(2) The existence of an ongoing investigation does not preclude the CRB from opening its own investigation when, for example, an internal affairs investigation seems to be taking an inordinately long time to complete. If the CRB votes to take such action, however, it should be based on advice of counsel that such action will not interfere with any ongoing criminal investigation.

(3) A decision of the CRB to proceed with an investigation may be challenged by any agency engaged in such investigation or prosecution by seeking a judicial order. Written notification of such challenge to the CRB shall stay the investigation for 48 hours to permit the agency to obtain such an order.

(4) If it is determined that there is already an ongoing investigation into the

complaint submitted to the CRB, the CRB may opt to take no immediate action, except to monitor the progress and outcome of the current investigation.

(5) If the complaint received by the CRB is already being investigated by police internal affairs, the final internal affairs report prepared for the chief of police shall be transmitted to the CRB for review within three (3) working days after it is sent to the chief.

(6) When a decision is made to launch an independent investigation of a complaint or after review of an internal affairs report, the CRB may:

- (i) request that the chief of police conduct further investigation; or
- (ii) obtain further case-specific information from the chief of police, including written materials, audio or video tapes and related documents; or
- (iii) conduct an independent investigation, such investigation to be concluded within 180 days or within a time period set by the CRB; or
- (iv) notice and hold a hearing to gather evidence; or
- (v) report its written findings and conclusions to the chief of police, with copies to the mayor, city commissioners, and city manager.

(7) The CRB chairperson may assign a member or committee to review internal affairs reports and make a recommendation that the CRB take one of the actions enumerated in subsection (6) above.

(8) Affected officers and complainants, to the extent permitted by law, shall receive copies of CRB reports to the police department and of the CRB's requests for information.

(c) The review or investigation process shall be concluded within 180 days or within a time period set by the CRB.

(d) At the conclusion of each review or investigation, the CRB shall render one of the following findings based on the preponderance of the evidence:

(1) Unfounded - where the review or investigation shows that the act or acts complained of did not occur or were misconstrued;

(2) Exonerated - where the acts that provide the basis for the complaint occurred, but the review or investigation shows such acts were proper;

(3) Not sustained - where, for example, the review or investigation fails to disclose sufficient facts to prove or disprove the allegation made in the complaint;

(4) Sustained - where, for example, the review or investigation discloses sufficient facts to prove the allegations made in the complaint;

(5) No finding - where, for example, the complainant failed to produce information to further the investigation, the review or investigation revealed that another agency was responsible and the complaint has been referred to that agency, the complainant withdrew the complaint, or the CRB did not reach a conclusion.

(e) At the conclusion of the review or investigation, the CRB shall forward its written findings and conclusions to the chief of police and to affected officers and, to the extent permitted by law, to the complainants. The chief of police shall respond in writing within 30 days.

#### **VIII. Procedures related to city employees and witnesses.**

(a) When a City of Key West employee, including police officers, appears before the CRB in response to a request or subpoena, such employee shall be formally advised prior to the commencement of testimony that if the employee has a good-faith belief that the testimony

would tend to be self-incriminating, and if, in reliance upon that good-faith belief, the employee declines to answer any question, that employee's decision not to provide testimony will not subject him or her to any adverse employment consequences. Any employee who, after receiving such advice, decides to testify or provide evidence, must sign a statement acknowledging that the employee understands the advice and is testifying or providing evidence voluntarily and knowingly.

(b) A police officer who is the subject of an investigation shall be informed of the nature of the investigation and provided with a copy of the complaint prior to being interrogated.

(c) A person who appears before the CRB in response to a request or subpoena may be represented by counsel or any other representative of his or her choice, which representative may be present at all times during the subject's appearance before the CRB. Rules of procedure shall be established by the CRB.

(d) Policies and procedures shall be established to ensure compliance with Chapters 112 and 119 of the Florida Statutes and other applicable laws.

#### **IX. Review and approval of annual budget.**

(a) The City shall adequately fund the CRB to allow it to carry out its function effectively of citizen oversight of the Key West police department.

(b) The CRB will adopt a fiscal year that coincides with that of the City. The city manager shall assign appropriate personnel to assist the CRB in the preparation of an annual budget and that budget shall be submitted to the city commission as part of his annual budget proposal.

(c) While the members of the CRB are volunteers, there shall be a full-time paid

Executive Director with clerical assistance. The CRB shall also retain an attorney to advise the Board. The CRB may also engage the services of professional investigators, as needed. The cost of appropriate office space, equipment and reasonable office expenses shall also be included in the budget. The cost of necessary training of the CRB members and staff may be a significant budget item the first year.

(d) No expenditure shall be made in any given year without approval by the city commission of the CRB budget for that year and all expenditures shall comply with City procedures for acquisition of goods and services. The city manager shall assign personnel to brief the CRB and staff concerning these procedures and to assist as appropriate.

(e) Nothing contained herein shall be construed to prohibit the CRB from submitting a supplemental budget and appearing before the City Commission to request approval.

#### **X. Annual reports.**

The CRB shall, at least annually, provide a report in writing to the mayor, the city commission, the city manager, the chief of police and the city attorney. Such reports should include, but are not restricted to, statistics and summaries of citizen complaints, a comparison of the CRB's findings and conclusions with the actions taken by the chief of police, recommendations related to changes in police policies and procedures, and any recommended changes concerning this ordinance.

#### **XI. Severability.**

If any section, part of a section, paragraph, clause, phrase or word of this charter section is declared invalid, the remaining provisions of this charter section shall not be affected.

(Referendum of 11-5-2002)

Editor's note: At an election held Nov. 5, 2002, the electors of the city approved the addition of § 1.07, Citizen review board. See also § 8.01(b) of this Charter.

# **AFFIDAVIT OF RETURN OF SERVICE**

Case No: 07-001

**CITIZEN REVIEW BOARD**

THE STATE OF FLORIDA

IN RE: THE COMPLAINT OF OMAR BROWN

I received this SERVICE on (date) MARCH 17, 2009 at 4:00 p .m. and served the below-  
listed documents on (name) Sgt. PABLO RODRIGUEZ  
at (location) c/o CITY OF KEY WEST POLICE DEPT., 1604 NORTH ROOSEVELT BLVD., KEY WEST, FLORIDA 33175  
on (date) MARCH 17, 2009 at 4:36 p .m.

- ☐ **INDIVIDUAL SERVICE:** By serving the within-named person a true copy of the below listed document(s). (F.S. 40.031)  
☒ **SUBSTITUTE SERVICE:**

Serving CHARNETTE VALDEZ as PATROL LIAISON

- ☐ **CORPORATE SERVICE:** By serving a true copy of this writ to any superior officer as defined in F.S. 48.081. Or resident agent of said corporation as defined in F.S. 48.091. To an employee of defendant corporation in compliance with F.S. 48.081 (3)

Serving \_\_\_\_\_ as \_\_\_\_\_

- ☐ **NON SERVICE:** Papers returned the same unexecuted as to the within-named person for the reason that after diligent search and inquiry failed to find said defendant/witness in Monroe County, Florida.

DOCUMENTS/COMMENTS: SUBPOENA FOR TESTIMONY (4/27/09)

I do hereby affirm that I am an authorized MCSO appointed Special Process Server in good standing in the jurisdiction of the 16th Judicial Circuit in and for Monroe County. Under penalty of perjury, I declare that I have read the foregoing document and have no interest in the above action, and declare that the facts stated are true.

91505

  
Gus Merkle

Process Server

*Anderson Process Service*

For: LAW OFFICES OF HUGH J. MORGAN  
317 Whitehead Street  
Key West, FL 33040

Atty: Robert Cintron, Jr., Esq.

**EXHIBIT**  
"B"

CITIZEN REVIEW BOARD

IN RE:

THE COMPLAINT OF  
OMAR BROWN

CASE NO. 07-001

3-17-09 4:36 p.m.

*Stephen Muffler*  
EUSMERXLE

CHARNETTE VALDEZ  
PATROL LIAISON

SUBPOENA FOR TESTIMONY

THE STATE OF FLORIDA:

(Sgt)

TO: Detective Pablo Rodriguez  
c/o City of Key West Police Department  
1604 North Roosevelt Blvd.  
Key West, FL 33040

YOU ARE COMMANDED to appear before the Citizen Review Board at the Old City Hall, 510 Greene Street, Key West, FL 33040, beginning Monday, April 27, 2009, at 6:30 p.m., to give testimony before the CRB in this action. If you fail to appear, you may be in contempt of court.

You are subpoenaed to appear by the following attorney, and unless excused from this subpoena by this attorney or the court, you shall respond to this subpoena as directed.

DATED on the 10<sup>th</sup> day of March, 2009.

*Bryan Green*  
Bryan Green  
Chairman of Citizen Review Board

Robert Cintron, Jr., Esq.  
Florida Bar No. 0325031  
317 Whitehead Street  
Key West, FL 33040  
PHONE (305) 296-5676  
FACSIMILE (305) 296-4331

NOTICE TO PERSONS WITH DISABILITIES:

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Executive Director Stephen Muffler, Citizen Review Board, #3 East Quay Road, Key West, FL 33040, telephone (305) 809-3887; fax: (305) 293-9827 within 2 working days of your receipt of this Notice; if you are hearing or voice impaired, call 711.

3-17-09  
9:50s 4:00 P



## CITIZEN REVIEW BOARD

IN RE: OMAR BROWN

CRB Case No. 07-001

---

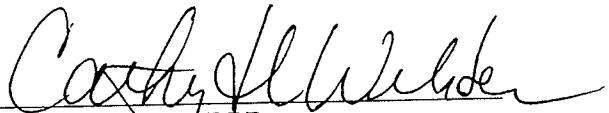
### CERTIFICATE OF NON APPEARANCE

STATE OF FLORIDA)  
COUNTY OF MONROE)

I, Cathy H. Webster, Registered Professional Reporter, do hereby certify that I was present at Old City Hall, 510 Greene Street, Key West, Florida, on Monday, April 27, 2009, at 6:30 p.m., for the purpose of reporting the testimony of Pablo Rodriguez in the above-styled matter, scheduled to begin at 6:30 p.m., before the Citizen Review Board, and Pablo Rodriguez did not appear. This reporter waited until 7:15 p.m. and Pablo Rodriguez did not appear.

Under penalties of perjury, I declare that I have read the foregoing certificate and that the facts stated in it are true.

DATED THIS 11th day of May, 2009.



Cathy H. Webster, RPR  
Courthouse Business Center  
302 Southard Street, Suite 107  
Key West, Florida 33040  
305-295-6279  
cwebkw@bellsouth.net

EXHIBIT

" C "

---